STATEMENT OF CONGRESSMAN RICK BOUCHER

Subcommittee on Communications, Technology and the Internet Hearing

Communication Networks and Consumer Privacy: Recent Developments

April 23, 2009

Broadband networks are a primary driver of the national economy, and it's fundamentally in the nation's interest to encourage their expanded use.

One clear way Congress can promote a greater use of the Internet for access to information, e-commerce and entertainment is to assure Internet users a high degree of privacy protection.

It's my intention for the Subcommittee this year to develop legislation extending to Internet users that assurance that their online experience is more secure.

We see this measure as a driver of greater levels of Internet uses such as e-commerce, not as a hindrance to them.

Today's discussion is the first of two presently planned hearings relating to consumer privacy on electronic networks.

Today we will explore network-based privacy matters, including the growing deployment of deep packet inspection technologies and location based privacy.

There are additional privacy related matters that we explore including targeted and behavioral advertising, and we are now planning to conduct a joint hearing with the Subcommittee on Commerce, Trade and Consumer Protection in the early summer to examine online privacy, including behavioral advertising, at which Internet based companies will be invited to testify.

A range of concerns related to online advertising should be vetted, just as there are concerns about the privacy implications of the network-based technologies upon which we are focusing this morning.

Those online advertising concerns will be thoroughly explored at the joint hearing this Summer.

But today's focus is on emerging network technologies that have significant privacy implications, and three of them will be highlighted by our witnesses.

Deep packet inspection enables the opening of the packets which hold the content of Internet transported communications. Through the use of DPI the content can be fully revealed and examined.

It has generally accepted beneficial uses such as enabling better control of networks and the blocking of Internet viruses and worms. It also enables better compliance by Internet service providers with warrants authorizing electronic message intercepts by law enforcement.

But its privacy intrusion potential is nothing short of frightening. The thought that a network operator could track a user's every move on the Internet, record the details of every search and read every email or attached document is alarming.

And while I'm certain that no one appearing on the panel today uses DPI in this way, our discussion today of the capabilities of the technology, the extent of its deployment and the uses to which it is being put will give us a better understanding of where to draw lines between permissible and impermissible uses or uses that might justify opt-in as opposed to opt-out consent.

I look forward to hearing from our witnesses about how we can best balance the deployment of DPI with adequate protection of consumers' privacy. For example, should a network operator's use of DPI always require opt-in consent, or is opt-out sometimes appropriate? What services that consumers consider essential to the safe and efficient functioning of the Internet are advanced by DPI? Since the death of NebuAd's DPI-based behavioral advertising service last year, are other companies using DPI to deliver behavioral advertising? What, if any, safeguards are in place to ensure that consumers are giving meaningful consent to the tracking of their activities on the Internet?

I also look forward to learning about other emerging network-based technologies like Project Canoe on the cable platform and Loopt in the wireless space, employing new uses of set top boxes and GPS tracking capabilities. What benefits do such services offer to consumers, and how should the network operator procure meaningful consent from users for their use?

We are also interested in hearing a preview of what the future of network-based technologies may hold—what new services they may enable and how to accommodate privacy concerns. I look forward to hearing from our distinguished panel about these and other matters.